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Inventor Sues City for Shooting by Sheriff's Deputy

By Mark Oswald
Of the Journal

The self-employed inventor who was shot three times in 2002 when he allegedly charged a Santa Fe County sheriff's deputy with a decorative sword has filed a lawsuit over the shooting.

The lawsuit filed in federal district court last week maintains that Walter Mitchell, 46, was shot in the back while walking away from the officer—an account in dispute with police reports and court testimony.

The suit contends that Mitchell "posed no legitimate threat" when he was shot and that "a reasonable officer" would not have shot him.

The suit filed for Mitchell by Rio Rancho attorney Dennis W. Montoya misidentifies Sgt. Dennis O'Brien, the Santa Fe County sheriff's deputy who shot Mitchell, as a Santa Fe city police department officer.

The suit names the city as a defendant, although O'Brien was at the time of the shooting and remains a member of the Santa Fe County Sheriff's Department. County government is not listed as a defendant. The suit also misspells O'Brien's name.

"Sgt. O'Brien absolutely has never worked for the City of Santa Fe," County Sheriff Greg Solano said last week.

Solano said he had heard the suit had been filed. "Now I know why I haven't received it," he said, referring to the suit's naming of the city instead of the county as a defendant.

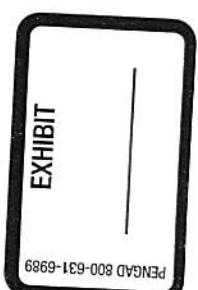
The lawsuit makes numerous references to city government, saying the city failed to properly train or supervise O'Brien and that "the City of Santa Fe was deliberately indifferent to the rights" of Mitchell.

Montoya did not return telephone messages left Friday. Efforts to reach Mitchell were unsuccessful.

At the time of the shooting, in November 2002, a state police spokesman said Mitchell was shot once in each arm and once in the lower abdomen as Mitchell advanced on O'Brien with a sword. Officers had been called to the scene after neighbors reported Mitchell was yelling at their dogs while armed with the sword.

O'Brien testified during Mitchell's March 2004 trial that Mitchell refused to drop the sword and at one point said "the apocalypse is here." O'Brien said he "made a decision to defend myself" when Mitchell came at him with the sword held with two hands.

Mitchell's lawyers said at the trial that Mitchell had a psychotic reaction to an ingredient in his cough syrup the day of the shooting.



Mitchell was found guilty of aggravated assault on a peace officer, but state District Judge Stephen Pfeffer found Mitchell to be mentally ill, making the verdict "guilty, but mentally ill."

Mitchell apologized to O'Brien when he was sentenced to 41/2 years probation in May 2004. O'Brien rejected the apology, saying he believed Mitchell apologized only because the judge said he had to. Solano said at the time that O'Brien was "very disappointed with the sentence, and so am I."

Mark Donatelli, Mitchell's defense attorney, said after Mitchell's trial that he would make a good candidate for probation. "He more than paid for his actions by being shot three times with a .357 magnum," Donatelli said.

An internal affairs investigation at the sheriff's department found that the shooting was justified.

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